

Before the
Federal Communications Commission
Washington, DC 20554

OCT 7 2002

| | | |
|---------------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Request for Review of the |) | |
| Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Homer-Center School District |) | File No. SLD-305376 |
| Homer City, Pennsylvania |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 ✓ |
| Universal Service |) | |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. |) | |

ORDER

Adopted: October 4, 2002

Released: October 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a request filed by Homer-Center School District (Homer-Center), Homer City, Pennsylvania.¹ Homer-Center seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Homer-Center's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny Homer-Center's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on April 24, 2002, denying Homer-Center's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Homer-Center's request for discounts for Internet access, Funding Request Number (FRN) 820772.⁴ On July 8, 2002, Homer-Center filed an appeal of SLD's decision.⁵ On July 22, 2002, SLD issued an Administrator's Decision on

¹ Letter from Beverly N. Gardner, Homer-Center School District, to Federal Communications Commission, filed August 9, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Beverly N. Gardner, Homer-Center School District, dated April 24, 2002 (Funding Commitment Decision Letter).

⁴ *Id.*

⁵ Letter from Beverly N. Gardner, Homer-Center Catholic School, to Schools and Libraries Division, Universal Service Administrative Company, filed July 8, 2002 (Request for Administrator Review).

Appeal indicating that it would not consider Homer-Center's appeal because it was received more than 60 days after the April 24, 2002 Funding Commitment Decision Letter was issued.⁶ Homer-Center subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with SLD or the Commission within 60 days of the issuance of the decision that the party seeks to have reviewed.⁷ Documents are considered to be filed with SLD or the Commission only upon receipt.* Because Homer-Center's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Homer-Center is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.⁹ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁰ Homer-Center has not shown good cause for the untimely filing of its initial appeal. Homer-Center states that due to the leave of absence from work for medical reasons of its business manager, and the fact that the district does not employ anyone to perform the business manager's duties in his absence, it is appealing SLD's rejection.¹¹

5. We conclude that Homer-Center has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹² In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the burden of adhering strictly to its filing deadlines. In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Beverly N. Gardner, Homer-Center School District, dated July 22, 2002 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b). *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002).

⁸ 47 C.F.R. § 1.7

⁹ *See* 47 C.F.R. § 54.720(b).

¹⁰ *See* 47 C.F.R. § 1.3

¹¹ Request for Review.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

its appeal to be considered on the merits. **An** applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf, even when such persons are away from the office on medical leave or otherwise incapacitated.¹³ Here, Homer-Center fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Homer-Center School District, Homer City, Pennsylvania, on August 9, 2002, and the request to waive the 60-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹³ See, e.g., *Request for Review by New Orleans Public Schools, New Orleans, Louisiana, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-201456, 201463, 201409, 201449, and 201493, CC Docket Nos. 96-45 and 97-21, **Order**, 16 FCC Rcd 16653 (Com. Car. Bur. rel. September 18, 2001), para. 17 (unavailability of responsible staff person due to sick leave is not a basis for granting an appeal).